

Appl. No. : 09/782,534
Filed : February 13, 2001

REMARKS

Claims 6, 8-11, 15-17, 19, 21, 23, 24, 26, 27, 32, and 45-47 were previously cancelled, without prejudice. In the Office Action mailed August 23, 2004, the Examiner withdrew from consideration Claims 7, 12-14, 22, 25, 28-31, 33-44, and 50-52. Claims 1-5, 48, and 49 stand rejected.

Information Disclosure Statement

In the Office Action mailed August 23, 2004, the Examiner recommended that Applicant "highlight those documents which ... are known to be of the most significance." See MPEP § 2004. In response to the Examiner's request, Applicant has attempted to identify the most relevant documents previously submitted in information disclosure statements. Applicant has also enclosed herewith a supplemental information statement which lists 3 additional documents.

Most Relevant, Previously Submitted Patent/Application Documents

No.	Document	Date	Name
1	RE 33,258	7/10/1990	Onik, et al.
2	4,265,231	5/5/1981	Scheller, Jr., et al.
3	4,541,423	9/17/1985	Barber
4	5,030,201	7/9/1991	Palestrant
5	5,285,795	2/15/1994	Ryan, et al.
6	5,383,884	1/24/1995	Summers
7	5,395,188	3/7/1995	Bailey, et al.
8	5,928,239	7/27/1999	Mirza
9	5,980,504	11/9/1999	Sharkey, et al.
10	6,022,362	2/8/2000	Lee, et al.
11	6,066,152	5/23/2000	Strauss, et al.
12	6,383,188 B2	5/7/2002	Kuslich, et al.
13	6,402,750 B1	6/11/2002	Atkinson, et al.
14	6,440,138 B1	8/27/2002	Reiley, et al.
15	6,540,747 B1	4/1/2003	Marino

Most Relevant, Previously Submitted Non-Patent/Application Documents

No.	Document
16	J.J. Trambert, M.D., "Percutaneous Interventions in the Presacral Space: CT-guided Precoccygeal Approach—Early Experience," (Radiology 1999; 213:901-904).
17	M.R. Zindrick, M.D., et al., "Clinical Anatomy of the Lumbosacral Junction and Pelvis," Lumbosacral and Spinopelvic Fusion, Chapter 2 (pp. 13-25) Lippincott-Raven Publishers (1996).
18	Parviz Kambin, M.D., et al., "Arthroscopic Microdiscectomy: An Alternative to Open Disc Surgery," The Mount Sinai Journal of Medicine, September 2000, Vol. 67, No. 4.
19	Hallett H. Mathews, M.D., et al., "Perspectives on Modern Orthopaedics, Minimally Invasive Techniques for the Treatment of Intervertebral Disk Herniation," Journal of the American Academy of Orthopaedic Surgeons, March/April 2002, Vol. 10, No. 2.

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Additional Documents

No.	Document	Date	Name
20	4,545,374	10/8/85	Jacobson
21	6,500,173	12/31/02	Underwood et al.
22	US 2002/0188292A1	12/12/02	Sharkey et al.

Copies of the above-identified references are enclosed herewith.

Claim Rejections - 35 U.S.C. § 102/103

In the Office Action mailed August 23, 2004, the Examiner rejected Claims 1-5, 48, and 49 under 35 U.S.C. § 102(e)/103(a) as being anticipated by Reiley et al. (U.S. Patent No. 6,440,138). With regard to Claim 1, the Examiner asserts that Reiley et al. disclose a discectomy apparatus for performing a discectomy of an intact or damaged intervertebral spinal disc, the apparatus having an elongated discectomy instrument (such as 22, 110, etc. and their respective components), a cutting head (such as 22, 110, etc.) located in a distal portion of the discectomy instrument, means (such as via expansion and bending) for extending the cutting head laterally away from the axial disc opening toward or through the annulus of the intervertebral spinal disc, and operating means (such as 56).

The Examiner further asserts that Reiley et al. disclose an anterior tract sheath having a shaped distal end with an engagement structure for engaging an anterior surface of the sacral vertebral body. The Examiner explains that the sheath has the capability of engaging, and thus, can be considered to have an engagement structure. The Examiner states that “the features upon which applicant relies (i.e., angled or beveled distal end) are not recited in the claim(s).”

Applicants respectfully traverse these rejections and the Examiner’s characterization of the cited reference. Pending Claim 1 recites:

1. (Currently amended): ~~[[Discectomy]] An apparatus for performing a discectomy of cutting material~~ inside an ~~intact or damaged~~ intervertebral spinal disc, the intervertebral spinal disc having a disc body formed of a nucleus and annulus, through a trans-sacral axial bore extending cephalad and axially from a sacral position of a sacral vertebral body through one or more vertebral body and through a vertebral body endplate and axial disc opening into the nucleus of the intervertebral spinal disc, the apparatus comprising:

an elongated discectomy instrument having a discectomy instrument body extending between a discectomy instrument proximal end and instrument distal end, a cutting head located in a distal portion of the discectomy instrument, the instrument body and cutting head dimensioned to fit within and to extend through the axial bore; and

an anterior tract sheath having a ~~[[shaped]] beveled~~ distal end ~~with an engagement structure~~ for engaging an anterior surface of the sacral vertebral body;

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wherein the ~~[[shaped]]~~ beveled distal end of the anterior tract sheath facilitates anchoring of the anterior tract sheath ~~[[into]]~~ onto the anterior surface of the sacral vertebral body from a para coccygeal skin access point.

Applicants respectfully submit that Reiley et al. fail to teach or suggest the unique combination of features recited by Claim 1. For example, Reiley et al. do not teach an anterior tract sheath having a beveled distal end that facilitates anchoring of the anterior tract sheath onto the anterior surface of a sacral vertebral body from a skin access point, such as, for example, a para coccygeal skin access point.


Claims 2-5, 48, and 49, which depend from Claim 1, are believed to be patentable for the reasons stated above with respect to Claim 1, and because of the additional limitations set forth therein. Accordingly, Applicants respectfully request that the rejection of Claims 1-5, 48, and 49 be withdrawn.

In view of the foregoing, Applicant respectfully submits that the pending claims of the present application are in condition for allowance, and such action is earnestly solicited. If, however, any questions remain, the Examiner is cordially invited to contact the undersigned so that any such matter may be promptly resolved. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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